**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR**

**WEDNESDAY, THE 03RD DAY OF JULY 2019 / 12TH ASHADHA, 1941**

**CRL.A.No.1016 of 2006**

**AGAINST THE ORDER/JUDGMENT IN SC 36/2006 of ADDITIONAL SESSIONS COURT (ADHOC-I), KOTTAYAM DATED 24-04-2006**

**AGAINST THE ORDER/JUDGMENT IN CP 20/2005 of JUDICIAL MAGISTRATE OF FIRST CLASS, ETTUMANUR**

**APPELLANT/S:**

**M.K.PONNAPPAN**
**S/O. KUTTAN, MULAKUMATTOM,**
**MALLOOSSERI P.O., KOTTAYAM.**

**BY ADV. SRI.RAJAGOPAL PADIPPURACKAL**

**RESPONDENT/S:**

**STATE OF KERALA**
**REPRESENTED BY THE PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA,, ERNAKULAM.**

**OTHER PRESENT:**

**SRI.E.C.BINEESH,PP**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03.07.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**JUDGMENT**

**The appellant was convicted and sentenced by the court below under Section 8(2) of the Abkari Act.**

**2. The prosecution allegation is that on 15.03.2004 at about 11.40 a.m., the appellant was found in possession of 2 litres of arrack in contravention of the provisions of the Abkari Act.**

**3. Since there is no representation for the appellant, this Court has appointed Adv.Smt.Surya P.Shaji as Amicus Curiae to argue the case for the appellant.**

**4. Heard the learned Amicus Curiae and the learned Public Prosecutor.**

**5. The learned Amicus Curiae has argued that since no forwarding note was produced and marked before the court, the appellant is entitled to benefit of doubt.**

**6. It appears that no forwarding note was produced and marked before the Court in this case. Therefore, it has to be held that the prosecution could not establish the tamper-proof dispatch of the sample to the laboratory. Therefore, there cannot be any guarantee that the sample produced before the court and analysed in the laboratory was the sample drawn from the contraband seized from the appellant. Since the forwarding note was not produced and marked before the court, there cannot be any link evidence**

**connecting the appellant with the sample analyzed in the laboratory. In the said circumstances, it is not safe to convict the appellant on the basis of Ext.P10 certificate of chemical analysis. Consequently, the conviction and sentence passed by the court below cannot be sustained.**

**In the result, this appeal stands allowed, setting aside the conviction and sentence passed by the court below and the appellant stands acquitted. The bail bond of the appellant stands discharged.**

Sd/-
**B. SUDHEENDRA KUMAR,**
**JUDGE**

STK

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//P.A. TO JUDGE//